General Assembly

Raised Bill No. 5637

February Session, 2006

LCO No. **2580**

*02580_____HS_*

Referred to Committee on Human Services

Introduced by:
(HS)

AN ACT CONCERNING THE AVAILABILITY OF A TEMPORARY SUPPLY OF A BRAND NAME PRESCRIPTION DRUG IN EMERGENCY SITUATIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 17b-274 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(a) The Division of Criminal Justice shall periodically investigate pharmacies to ensure that the state is not billed for a brand name drug product when a less expensive generic substitute drug product is dispensed to a Medicaid recipient. The Commissioner of Social Services shall cooperate and provide information as requested by such division.

(b) A licensed medical practitioner may specify in writing or by a telephonic or electronic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance, or ConnPACE recipient, provided (1) the practitioner specifies the basis

on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution, and (2) the phrase "brand medically necessary" shall be in the practitioner's handwriting on the prescription form or, if the prohibition was communicated by telephonic communication, in the pharmacist's handwriting on such form, and shall not be preprinted or stamped or initialed on such form. If the practitioner specifies by telephonic communication that there shall be no substitution for the specified brand name drug product in any prescription for a Medicaid, state-administered general assistance, or ConnPACE recipient, written certification in the practitioner's handwriting bearing the phrase "brand medically necessary" shall be sent to the dispensing pharmacy within ten days. A pharmacist shall dispense a generically equivalent drug product for any drug listed in accordance with the Code of Federal Regulations Title 42 Part 447.332 for a drug prescribed for a Medicaid, state-administered general assistance, or ConnPACE recipient unless the phrase "brand medically necessary" is ordered in accordance with this subsection and such pharmacist has received approval to dispense the brand name drug product in accordance with subsection (c) of this section.

(c) The Commissioner of Social Services shall implement a procedure by which a pharmacist shall obtain approval from an independent pharmacy consultant acting on behalf of the Department of Social Services, under an administrative services only contract, whenever the pharmacist dispenses a brand name drug product to a Medicaid, state-administered general assistance, or ConnPACE recipient and a chemically equivalent generic drug product substitution is available. The length of authorization for brand name drugs shall be in accordance with section 17b-491a, as amended. In cases where the brand name drug is less costly than the chemically equivalent generic drug when factoring in manufacturers' rebates, the pharmacist shall dispense the brand name drug. If such approval is not granted or denied within two hours of receipt by the commissioner of the request for approval, it shall be deemed granted. Notwithstanding

any provision of this section, a pharmacist shall not dispense any initial maintenance drug prescription for which there is a chemically equivalent generic substitution that is for less than fifteen days without the department's granting of prior authorization, provided prior authorization shall not otherwise be required for atypical antipsychotic drugs if the individual is currently taking such drug at the time the pharmacist receives the prescription. The pharmacist may appeal a denial of reimbursement to the department based on the failure of such pharmacist to substitute a generic drug product in accordance with this section.

(d) Notwithstanding the provisions of subsection (c) of this section, in an emergency situation where a Medicaid, state-administered general assistance or ConnPACE recipient presents to a pharmacist a prescription for a drug requiring prior approval, but for which prior approval has not been obtained, the Department of Social Services or any entity that administers a Medicaid managed care health plan shall:

(1) Ensure the immediate electronic authorization of up to a thirty-day supply of the originally prescribed drug, provided the recipient signs a statement, on such form as the commissioner prescribes, concerning the nature of the emergency situation that necessitates prescribing the brand name drug in the absence of prior approval;

(2) Require that the initial response to a pharmacist requesting authorization for the drug include confirmation of the availability of payment for dispensing such a temporary supply;

(3) Provide notification to the prescriber, not later than twenty-four hours after receipt of the prescription, by facsimile transmission or electronic mail, (A) that prior approval is required for the prescribed drug, (B) the specified process for obtaining prior approval, together with forms that may be transmitted electronically to obtain prior approval, (C) that a temporary supply of the prescribed drug, not to exceed thirty days, was issued in the absence of prior approval, and

(D) that identifies any alternative drugs contained on the preferred drug lists, believed to be equally effective; and

(4) Mail written notification to the Medicaid, state-administered general assistance or ConnPACE recipient, not later than twenty-four hours after receipt of the prescription, that (A) prior approval is required for the prescribed drug, (B) a temporary supply of the prescribed drug was issued in the absence of prior approval, and (C) identifies any alternative drugs contained on the preferred drug lists, believed to be equally effective.

(e) Any person who wilfully misrepresents any fact in connection with obtaining a prescription pursuant to subsection (d) of this section shall be subject to suspension of eligibility for program benefits for a period of not more than one year for a first offense and a permanent revocation of eligibility for a second offense.

[(d)**]** (f) A licensed medical practitioner shall disclose to the Department of Social Services or such consultant, upon request, the basis on which the brand name drug product and dosage form is medically necessary in comparison to a chemically equivalent generic drug product substitution. The Commissioner of Social Services shall establish a procedure by which such a practitioner may appeal a determination that a chemically equivalent generic drug product substitution is required for a Medicaid, state-administered general assistance, or ConnPACE recipient.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2006*	17b-274

Statement of Purpose:

To allow recipients of prescription drug benefits under the Medicaid, state-administered general assistance and ConnPACE programs access to a temporary supply of a brand name prescription drug in the absence of prior authorization for such drug in emergency situations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]